

SUMMONS ISSUED NO

LOCAL RULE 4.1

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BY DPTY. CLK. Kim Wood

DATE 12-23-03

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE

2003 DEC 23 P 3:54

U.S. DISTRICT COURT
DISTRICT OF MASS.

C.A. No. _____

03-12599-JLT

NOTICE OF REMOVAL

MAGISTRATE JUDGE DWJ

Pursuant to 28 U.S.C. 1441, *et seq.*, Defendant National Railroad Passenger Corporation (“Amtrak”), by its attorneys, hereby removes the entire civil action in the Superior Court of Essex, Massachusetts, captioned *Christina R. Curcuru v. National Railroad Passenger Corporation* (Superior Court Civil Action No. 03-2151-C), to this Court. A copy of the Complaint is attached as Exhibit A. The Co-Defendant, Massachusetts Bay Transportation Authority (“MBTA”), has agreed to this removal and has indicated it will be filing a Notice of Consent.

As grounds for removal, Amtrak states as follows:

1. On or about November 13, 2003, the Complaint was filed in the Superior Court of Essex, Massachusetts. Amtrak received a copy of the Complaint on November 24, 2003.
2. Pursuant to 28 U.S.C. § 1441(a), any civil action over which the district courts of

- the United States have original jurisdiction may be removed from state to federal court.
3. Pursuant to 28 U.S.C. § 1331, the district courts of the United States have original jurisdiction over any civil action presenting a question of federal law.
 4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1349, which creates original jurisdiction for all civil actions against corporations created by Congress and owned by the United States. Specifically, §1349 states: the “district courts shall not have jurisdiction of any civil action by or against any corporation upon the grounds that it was incorporated by or under and Act of Congress, *unless* the United States is the owner of more than one-half of its capital stock.” *Id.* (emphasis added).
 5. Amtrak is a federally-chartered stock corporation and more than half of its stock is owned by the United States. *See Hollus v. Amtrak Northeast Corridor*, 937 F. Supp. 1110 (D.N.J. 1996), *aff'd*, 118 F.3d 1585 (3rd Cir. 1997).
 6. Accordingly, this Court has federal question jurisdiction over this case. *See e.g.* *Davidson v. National R.R. Passenger Co.*, No. Civ. A. 00-1226, 2000 WL 795881, *2 (E.D. Pa. June 9, 2000) (“As Amtrak is a federally-chartered corporation whose stock is wholly owned by the federal government, this Court has original subject matter jurisdiction . . . under 28 U.S.C. §§ 1331 and 1349.”); *Hollus*, 937 F. Supp. At 1113 (“because a majority of the capital stock of Amtrak is owned by the United States, the federal courts have subject matter jurisdiction over any action involving Amtrak”); *Wyant v. National R.R. Passenger Co.*, 881 F. Supp. 919, 924 (S.D.N.Y. 1995) (“[I]t is well-settled that federal courts have

federal question jurisdiction over suits by and against Amtrak under 28 U.S.C. § 1331."); *Wormley v. Southern Pacific Transp. Co.*, 863 F.Supp. 382, 384 (E.D. Tex. 1994) ("It is undisputed that the United States owns more than half of Amtrak's capital stock.").

7. This Notice of Removal is timely filed pursuant to 29 U.S.C. § 1446(b) because it was filed less than thirty days from November 24, 2003, the date upon which Defendant Amtrak received a copy of the Complaint. No previous Notice of Removal has been filed or made to this court for the relief sought herein.

WHEREFORE, Defendant Amtrak respectfully requests that the Complaint be removed from the Superior Court of Essex County, Massachusetts, to the United States District Court for the District of Massachusetts.

Respectfully submitted,
Defendant,
NATIONAL RAILROAD
PASSENGER CORPORATION,
By its attorneys,

Dated: December 23, 2003



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CERTIFICATE OF SERVICE

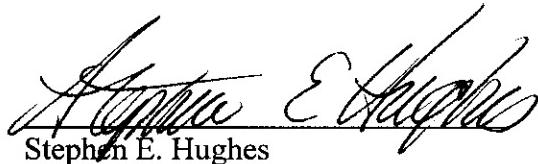
I, Stephen E. Hughes, hereby certify that I have served a copy of the foregoing pleading upon counsel of record for each other party by first class mail, postage prepaid, on this 23rd day of December, 2003, as listed below.

Plaintiff:

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MBTA:

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Legal Department
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Stephen E. Hughes